IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

FAO.No. 123 of 2007()

AGAINST THE ORDER DATED 08/02/2007 IN IA.1212/06 AND 1213/06 IN OS.24/2000 OF THE SUBORDINATE JUDGE'S COURT, QUILANDY

APPELLANT:PETITIONER: 2ND DEFENDANT:

P.SUNIL, S/O.BALAN NAMBIAR,
'SREENILAYAM',MANAGING PARTNER,ALAKA MOVIES,
CHERUVANNUR AMSOM, AVALA-KOYILANDY,
KOZHIKODE DISTRICT.

BY ADV. SRI.K.P.SUDHEER

RESPONDENTS: RESPONDENTS:PLAINTIFF & 3RD DEFENDANT:
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1. E.C.GANGADHARAN NAMBIAR,
S/O.SANKARA KURUP,
VADAKKEKKANDY HOUSE, CHERUVANNUR - AVALA,
KOYILANDY.

2. NISHA ANIL BABU,
W/O.ANIL BABU,KOROTH HOUSE,
ERAVATTUR, EDAVARAD,
KOYILANDY, KOZHIKODE DISTRICT.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 12/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

F.A.O. NO. 123 OF 2007

Dated this the 12th day of April, 2007

JUDGMENT

Sankaran, J.

Appellant is the second defendant in O.S.No.24 of 2000, on the file of the Court of the Subordinate Judge, Koyilandy. The suit was filed for dissolution of partnership. The court below passed an exparte decree on 21.3.2003. An application was filed by the plaintiff for passing the final decree. The appellant appeared in the final decree proceedings. Thereafter, he filed I.A.Nos.1212 of 2006 and 1213 of 2006 to set aside the exparte decree and to condone the delay in filing the application to set aside the exparte decree. The court below, by the impugned common order, dismissed the applications.

2. Written statement was filed on 1.3.2001. The suit was included in the special list on 4.2.2003. On that day, the counsel for the appellant herein as well as the appellant were absent. Thereafter, the court

passed an exparte decree on 21.3.2003. In the final decree proceedings, the appellant entered appearance on 17.10.2005. The application was posted on 11.11.2005 for filing counter. No counter was filed by the appellant. A Commissioner was appointed by the court below and the Commissioner filed the report on 14.6.2006. The application to set aside the exparte decree was filed only thereafter and the case put forward by the appellant is that he came to know of the exparte decree only on 10.7.2006. The court below found, according to us rightly, that the appellant cannot be heard to say that he was not aware of the proceedings till 10.7.2006. The appellant was served with summons in the suit and was served with notice in the final decree proceedings. In the suit as well as in the final decree proceedings, he appeared. At the time when the Commissioner was appointed, the appellant was represented by counsel and as rightly stated by the court below, the appellant cannot be heard to say that he was not aware of the proceedings. More over, no evidence was adduced by the appellant before the court

below in spite of the contention raised by the respondents that the case put forward by the appellant is not true. The specific case of the respondents is that the appellant was aware of the proceedings all through out and that he was not prevented by any sufficient cause from appearing before court in the suit. In spite of all these contentions, the appellant did not think it fit to adduce any evidence to substantiate his contentions. In our view, the court below rightly dismissed the applications. No interference is called for.

The F.A.O is accordingly dismissed.

(KURIAN JOSEPH)
Judge

(K.T.SANKARAN)
Judge

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